7 PERC ¶ 14228

LOS ANGELES UNIFIED SCHOOL DISTRICT

California Public Employment Relations Board

Howard O. Watts, Complainant, v. Los Angeles Unified School District, Respondent.

Docket No. LA-PN-38

Order No. 336

August 18, 1983

Before Gluck, Chairperson; Jaeger and Morgenstern, Members

Public Notice Law -- Sunshining Counterproposals -- Statutory Requirements -- -- 07.54, 71.13 Issue of whether school district's policy, under which new bargaining proposals were placed in file accessible to public within 24 hours of their presentation to union, was sufficient to comply with EERA section 3547(d), which requires that school employer "make public" new subjects of meeting and negotiating within 24 hours of their presentation to exclusive representative, necessitated remand for further testimony on degree to which such file was accessible to public.

APPEARANCES:

Howard O. Watts, representing himself.

DECISION

MORGENSTERN, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by the complainant, Howard O. Watts, to the hearing officer's proposed decision [see 6 PERC 13191 (1982)] which dismissed the alleged violations of a public notice provision of the Educational Employment Relations Act (EERA or Act). The hearing officer concluded that the District complied with subsection 3547(d) by placing an informational document in a file in the public information office within 24 hours after a new proposal was presented.1

FACTS

On September 15, 1981, Watts filed the instant public notice complaint against the Los Angeles Unified School District (District) and the United Teachers of Los Angeles (UTLA). He alleged, inter alia, that the District and UTLA failed to make public their new bargaining proposal in violation of EERA subsection 3547(d). Watts' complaint proceeded to hearing on May 27, 1982.

Thereafter, on June 14, 1982, the parties2 were asked to submit post-hearing briefs addressing Watts' argument, raised for the first time at the hearing, that merely placing a new proposal in the file in the public information office does not satisfy EERA's public notice provisions.

On July 14, 1982, Watts submitted a motion to correct the hearing transcript to include reference to a settlement proposal3 and to identify the PERB general counsel as the "unidentified" voice noted in the hearing transcript.

The hearing officer replied to this motion on July 22, 1982 and informed Watts that no reference to the settlement appeared on the record since the "Motion for Settlement" was received and discussed during the pre-hearing conference. The hearing officer considered the proposed settlement to be a request to reconvene informal settlement discussions with the District and

UTLA; however, both parties declined. He advised Watts that he would treat the settlement proposal as an attempt to specify a remedy.

As to Watts' request to have the general counsel identified on the transcript, the hearing officer indicated that while no positive identification was impossible, the general counsel's appearance was noted. He advised Watts, however, that none of those comments would be considered.

On July 26, 1982, Watts submitted a motion to reopen the hearing, seeking to introduce evidence concerning the exact time the new proposal was placed in the public information file and to introduce a settlement proposal which was allegedly offered during the hearing but not recorded.

On July 30, 1982, the District responded to Watts' point about the time of filing and asserted that while inconsistent statements did appear in the record, the public filing was timely in either situation.

In the proposed decision issued on August 17, 1982, the hearing officer dismissed Watts' allegation that the District failed to place the new bargaining proposal in the public information file within the 24-hour time limit. He also rejected Watts' assertion that simply placing a document in a file in the public information office and allowing public access to that file does not constitute compliance with the statutory public notice requirements.4

He concluded that subsection 3547(d) does not require the employer to place the new proposal on the school board's agenda or to post informational notices at various locations. The hearing officer outlined the process through which the public is permitted to participate in the collective bargaining process and found that the chronological public notice scheme requires sunshining of initial proposals only. As to the requirement that new proposals be made public, he found no evidentiary support for Watts' assertion that few people knew of or could have found the public information file and noted that a District bulletin specifying where information regarding new proposals could be obtained was on file in all schools in the District.

DISCUSSION

With one exception, Watts' disputes with the hearing officer's proposed decision fail to raise meritorious arguments. Several of his exceptions refer to the proposed settlement and contest the manner in which it was handled. In fact, however, the hearing officer appropriately considered the settlement Watts proposed. After the settlement was received, the hearing officer offered to reconvene the informal settlement conference. The District and UTLA rejected the offer and the proposed settlement. After the hearing was completed, the hearing officer again considered the settlement in conjunction with Watts' motion for correction of transcript. In response thereto, Watts was advised that the proposed settlement was not discussed during the hearing so it was not referenced on the record, that the settlement was treated as a request to reconvene informal discussions, and that the settlement was a part of the case record and would not be denied but would be treated as an attempt to specify a remedy.

Thereafter, in his proposed decision, the hearing officer specifically considered the settlement, this time in the context of Watts' motion to reopen the record. Concluding that the District complied with all public notice requirements by placing the new proposal in the public information file, the hearing officer found the settlement proposal to be "of no practical value as a requested remedy" and denied Watts' motion.

In the instant case, five of Watts' exceptions essentially reiterate his earlier complaints regarding the alleged settlement he proposed. They are all without merit and are disregarded.

Similarly, as to Watts' exception concerning identification of the unidentified voice in the transcript, the hearing officer aptly considered and rejected the argument.

First, with regard to Watts' motion to correct the transcript, the hearing officer advised that positive identification was not possible, but that the unidentified speaker's comments would not be considered. A reading of the transcript reveals that the comments of the unidentified speaker

were efforts to assist Watts or the hearing officer or otherwise offered for the purpose of moving the proceeding along. Watts was in no way prejudiced by these comments nor was the decision based on the remarks. This exception is without merit.

Watts also charges that the hearing officer erred in refusing to allow Watts to introduce certain evidence. During the hearing, Watts tried to introduce the recommendation of the District office of staff relations to the board of education that the board should find Watts' complaint unmeritorious. The hearing officer found that the action taken by the school board under its internal complaint procedure was not relevant to the issue raised in the instant case. The hearing officer's ruling was correct.

Watts also submits an exception concerning the discrepancy in the testimony of William J. Sharp, District assistant superintendent/staff relations, and Reginald Murphy, his subordinate. In the District's response to the instant complaint, Sharp advised Watts that the document detailing the new proposal was placed in the public information file on August 18, 1981, the same afternoon it was presented to UTLA. When Murphy testified at the hearing, however, he said he placed the document in the file on the following morning, August 19, 1981. In conjunction with Watts' post-hearing motion to reopen the record, the hearing officer considered this matter. He concluded that Watts was aware of Sharp's response before the hearing; yet, at the hearing, he failed to question Murphy about the discrepancy. He therefore found no showing that the testimony sought to be introduced was not known or unavailable to Watts during the hearing. In addition, the hearing officer noted that, while the record may never reveal the reason for the discrepancy, the document was placed in the public information file within the 24-hour time limit, as required by subsection 3547(d). Watts' exception reiterates the argument appropriately resolved by the hearing officer and is accordingly rejected.

Watts also argues that the hearing officer should have recognized and described on the record each of the exhibits submitted by Watts in support of his appeal of the dismissal of portions of this public notice complaint by the regional director.5 The hearing officer took "official notice" of that case and its supporting exhibits. The hearing officer appropriately incorporated these documents by reference. It was not necessary to read each into the record.

Two of Watts' exceptions concern the allegation that he was disadvantaged by virtue of the fact that he is not a lawyer and acted in pro per. There is little basis to conclude that legal training would have altered the result in the instant case. Admittedly, a reading of the transcript displays lengthy arguments between Watts and the hearing officer, extensive repetition of explanation by the hearing officer, and little testimony from witnesses. It does not reveal, however, that the hearing officer relied extensively on technical arguments of "legalese."

In *Los Angeles Community College District* (12/15/81) PERB Decision No. 186, 6 PERC 13008, the Board concluded that PERB Rule 37030 requires PERB representatives to provide technical assistance rather than legal representation to the complainant. And see *Los Angeles Community College District* (12/15/81) PERB Order No. Ad-119. There is nothing in the record to support a finding that such assistance was requested or denied. These exceptions are therefore rejected.

Watts' final exception refers to the hearing officer's refusal to permit Watts to call two additional witnesses. However, the exception raises the larger issue of the scope of Watts' alleged public notice violation. While not free of ambiguity, the charge can reasonably be read to ask whether new proposals must be sunshined in the same manner as parties' initial proposals or, if not, whether placement in the public information file satisfies the "make public" requirement of subsection 3547(d).

Initially, the hearing officer did not address either of these issues but limited the scope of the hearing to the question of whether the District placed the new proposal in the public information file within the 24-hour time period. Following the hearing, however, he expanded the parameters of the instant case to include the issues of whether the new proposals must be sunshined and whether placement of a document in the public information file constitutes compliance with the

statutory public notice requirements.6

As to the first issue, we agree with the hearing officer's conclusion that the language of subsection 3547(d) does not mandate the public school employer to place new negotiating proposals on the school board's agenda. As discussed by the hearing officer, section 3547 provides a process by which the public is made aware of the collective bargaining exchange. Unlike subsection (d), subsections 3547(a), (b) and (c) relate to initial proposals and clearly contemplate a chronological process encouraging comment at public meetings of the school board on initial proposals.7 As compared to the first three subsections, subsection 3547(d) does not refer to meetings of the employer and we do not read it to require placement of new proposals on the school board's agenda or bulletin boards.

Notwithstanding this conclusion, we cannot divest of all substance the statutory directive to "make public" and must determine what is required to satisfy that provision. Unfortunately, the hearing officer's decision to expand the complaint to include this issue after completion of the hearing poses some difficulty.

At the conclusion of the hearing, the hearing officer asked Watts if he had any witnesses who would speak to the issue of whether the 24-hour filing deadline had been met. In response, Watts said "I've got a witness that can testify whether the document should be put in the public information file." While we readily admit to difficulty in determining exactly what evidence Watts hoped to elicit, our interpretation of the record compels the conclusion that at least one of Watts' witnesses may have been called to address the issue of the adequacy of the public information file.

Given the hearing officer's decision to expand the scope of the charge, the ruling to exclude the first witness seems inappropriate. Whether new proposals "should be" placed in the public information file may reasonably be read as an offer of proof that the witness could testify as to the general awareness of the public information file.

Factual evidence on this point is necessary in order to assess the sufficiency of the District's procedure. Indeed, when the hearing officer expanded the parameters of the instant case to include the issue of whether the District's public information file procedure constitutes compliance with subsection 3547(d), he stated:

> The Complainant alleges that the District's policy is insufficient for the public to become aware of the new subjects of negotiation in that few people could find the file or know of its existence. However, as mentioned earlier, *no evidence was offered to support this allegation.* (Emphasis supplied.)

The fact that he found the evidence lacking to support the alleged inadequacy of the public information file is not surprising since Watts was prohibited from addressing the issue during the hearing. Indeed, the hearing officer's conclusion that the District's public information file satisfied the statutory requirements was offered without permitting *either* party the opportunity to fully present all relevant evidence.8

In short, the record was not fully developed to be conclusive as to whether the public information file is, in fact, sufficiently "public." The hearing officer decided to redefine the scope of the charge after completion of the hearing but failed to permit Watts or the District to introduce all relevant evidence on that point. We find this conduct to have denied the parties fundamental due process guarantees and conclude that the hearing must be reconvened to permit the introduction of all evidence relevant to the accessibility of the public information office and to Watts' contention that the hearing officer erred in concluding that subsection 3547(d) is satisfied by placing the new proposals in that file.

Thus, our determination as to whether the Los Angeles Unified School District's public information file satisfies subsection 3547(d) requires a remand since (a) neither party was permitted to fully address the issue at hearing and (b) Watts was specifically denied the

opportunity to present witnesses who allegedly would have addressed the issue. We stress that the Board is authorized to interpret what is required by the "make public" requirement and admonish both parties that general opinion testimony will not be permitted. Our concern is that all factual evidence relevant to this issue come before us. Thus, we direct that the instant case be remanded to permit both parties to elicit factual evidence relevant to whether the public information file satisfies the public notice requirement of subsection 3547(d).

Chairperson Gluck and Member Jaeger joined in this Decision.

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1 EERA is codified as Government Code section 3540 *et seq*. Unless otherwise indicated, all statutory references are to the Government Code.

Subsection 3547(d) states in pertinent part:

> New subjects of meeting and negotiating arising after the presentation of initial proposals shall be made public within 24 hours . . . .

2 At the commencement of the hearing, the parties stipulated that the charge against UTLA be dismissed.

3 On May 24, 1982, prior to commencing the hearing, Watts submitted a written motion to settle. He proposed that all new bargaining proposals be included in the board of education agenda documents distributed at public meetings of the board and that the full package be posted on bulletin boards where the agendas are customarily posted.

4 With regard to this issue, the hearing officer dismissed the District's argument that, since Watts failed to raise this issue prior to hearing, his effort to amend the complaint should have been denied. The hearing officer found that the District was not prejudiced by this amendment because it raised a legal rather than factual issue and because the District was permitted the opportunity to address the merits of the argument in a post-hearing brief.

5 On November 10, 1981, the Los Angeles regional director dismissed portions of Watts' initial complaint without leave to amend. Watts subsequently appealed. The Board's review of that dismissal is found in *Los Angeles Unified School District* (8/18/83) PERB Decision No. 335.

6 During the hearing, the District voiced opposition to Watts' effort to amend his complaint to include his challenge to the adequacy of the public information file. The hearing officer took the District's objection under advisement and, after conclusion of the evidentiary hearing, invited the parties to address the issue in their post-hearing briefs. In his proposed decision, the hearing officer permitted Watts' amendment since the facts were not in dispute and due process was therefore served through submission of briefs. The District did not except to the hearing officer's decision to permit Watts' amendment. As discussed *infra,* however, we are in disagreement with the hearing officer's conclusion that the adequacy of the public information file can be assessed without reliance on factual considerations.

7 Section 3547 outlines the public presentation of proposals. It states:

> (a) All initial proposals of exclusive representatives and of public school employers, which relate to matters within the scope of representation, shall be presented at a public meeting of the public school employer and thereafter shall be public records.

(b) Meeting and negotiating shall not take place on any proposal until a reasonable time has elapsed after the submission of the proposal to enable the public to become informed and the public has the opportunity to express itself regarding the proposal at a meeting of the public school employer.

(c) After the public has had the opportunity to express itself, the public school employer shall, at a meeting which is open to the public, adopt its initial proposal.

(d) New subjects of meeting and negotiating arising after the presentation of initial proposals shall be made public within 24 hours. If a vote is taken on such subject by the public school employer, the vote thereon by each member voting shall also be made public within 24 hours.

(e) The board may adopt regulations for the purpose of implementing this section, which are consistent with the intent of the section; namely that the public be informed of the issues that are being negotiated upon and have full opportunity to express their views on the issues to the public school employer, and to know of the positions of their elected representatives.

8 The hearing officer included reference to some evidence relevant to the adequacy of the public information file. He stated, for example, that a District bulletin, on file at all schools, specifies where the information can be obtained, that the public information office would be a logical place to look for the documents and that the documents are in fact also available from the staff relations office. The hearing officer failed to note, however, that the above-mentioned bulletin was circulated to the District's schools in 1979 and that, according to Sharp who maintains the file in the staff relations office, no one has ever requested to see a new or subsequent proposal contained in that file.